

2010 WL 7097664 (Ky.Cir.Ct.) (Trial Pleading)
Circuit Court of Kentucky.
Hopkins County

Pearline W. OFFUTT, Individually, and as Administratrix of the Estate of Joseph Clint Offutt,
deceased, and on behalf of the wrongful death beneficiaries of Joseph Clint Offutt, Plaintiff,

v.

HBR MADISONVILLE, LLC d/b/a Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/
k/a Hillside Villa Care and Rehabilitation Center Sun Healthcare Group, Inc. Sunbridge Healthcare Corporation
Harborside Healthcare Corporation Harborside Healthcare Management, LLC Massachusetts Holdings II,
Limited Partnership Harborside Administrative Services, LLC Harborside Health 1, LLC Harborside Holdings
1, LLC Kentucky Holdings 1, LLC Hbr Kentucky, LLC Careerstaff Unlimited, Inc. Karen Langston, in her
capacity as Administrator of Harborside Healthcare John Does 1 through 5, Unknown Defendants, Defendants.

No. 09CI00529.
October 8, 2010.

Second Amended Complaint

[Lisa E. Circeo](#) (KY 90252), Wilkes & McHugh, P.A., 429 North Broadway, Lexington, KY 40508, Telephone: (859) 455-3356,
Facsimile: (859) 455-3362.

[Jerry P. Rhoads](#), Esq., Rhoads & Rhoads, PSC, 9 East Center Street, Madisonville, KY 42431, 800) 771-1490, Attorneys for
Plaintiff.

COMES NOW Plaintiff, Pearline W. Offutt, Individually, and as Administratrix of the Estate of Joseph Clint Offutt, deceased,
and on behalf of the wrongful death beneficiaries of Joseph Clint Offutt, and for her cause of action against Defendants, HBR
Madisonville, LLC d/b/a Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care
and Rehabilitation Center; Sun Healthcare Group, Inc.; Sunbridge Healthcare Corporation; Harborside Healthcare Corporation;
Harborside Healthcare Management, LLC; Massachusetts Holdings II, Limited Partnership; Harborside Administrative
Services, LLC; Harborside Health 1, LLC; Harborside Holding 1, LLC; Kentucky Holdings 1, LLC; HBR Kentucky, LLC;
CareerStaff Unlimited, Inc.; Karen Langston, in her capacity as Administrator of Harborside Healthcare - Madisonville
Rehabilitation and Nursing Center; and John Does 1 through 5, Unknown Defendants, states:

1. Pearline W. Offutt is the Administratrix of the Estate of Joseph Clint Offutt as appointed by the Order of Hopkins County
District/Probate Court, Case No. 08-P-189 and therefore brings this action on behalf of Joseph Clint Offutt, deceased, and on
behalf of the wrongful death beneficiaries of Joseph Clint Offutt pursuant to the Survival of Actions Statute ([K.R.S. § 411.140](#))
and the Wrongful Death Statute ([K.R.S. § 411.130](#)).

2. Pearline W. Ofutt is the spouse of Joseph Clint Offutt, and a resident of Madisonville, Hopkins County, Kentucky.

3. Upon information and belief, Joseph Clint Offutt was a resident of Madisonville Rehabilitation and Nursing Center n/k/a
Hillside Villa Care and Rehabilitation Center (sometimes referred to herein as “the facility”), located at 1500 Pride Avenue,
Madisonville, Hopkins County, Kentucky 42431, from on or about March 25, 2008 until on or about April 3, 2008, when he
was transferred to Regional Medical Center and died on April 5, 2008.

4. At all times relevant to this action Joseph Clint Offutt was of unsound mind, and he remained incompetent until his death on April 5, 2008.

5. Defendant HBR Madisonville, LLC, is a foreign limited liability company with its principal office located at One Beacon Street, Suite 1100, Boston, Massachusetts 02108, and authorized to do business in the Commonwealth of Kentucky by owning, operating, managing, controlling and/or providing services for Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center located in Madisonville, Hopkins County, Kentucky. Upon information and belief, HBR Madisonville, LLC was, at all times material to this action, the “licensee” of the nursing facility. Under the laws and regulations promulgated and enforced by the Cabinet for Health and Family Services, as licensee of the facility, HBR Madisonville, LLC was legally responsible for that facility and for ensuring compliance with all laws and regulations related to the operation of the facility. The causes of action made the basis of this suit arise out of such business conducted by said Defendant HBR Madisonville, LLC in the ownership, operation, management, control, licensing and/or services provided for the facility during the residency of Joseph Clint Offutt. The agent for service of process for HBR Madisonville, LLC d/b/a Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center is CSC-Lawyers Incorporating Service Company, 421 West Main Street, Frankfort, Kentucky 40601.

6. Defendant Sun Healthcare Group, Inc. is a foreign corporation with its principal office located at 101 Sun Avenue, NE, Albuquerque, New Mexico 87109. Defendant Sun Healthcare Group, Inc., through its wholly owned subsidiaries, is a major provider of long-term care in several states across the country. Upon information and belief, and at all times material to this action, Defendant Sun Healthcare Group, Inc. owned, operated, managed, controlled and/or provided services for nursing facilities, including Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center in Madisonville, Hopkins County, Kentucky. The causes of action made the basis of this suit arise out of such business conducted by said Defendant Sun Healthcare Group, Inc. in the ownership, operation, management, control and/or services provided for the facility during the residency of Joseph Clint Offutt. Defendant Sun Healthcare Group, Inc. is without an agent for service of process within the Commonwealth of Kentucky and which should, therefore, be served by service of process upon the Kentucky Office of the Secretary of State, The Capitol Building, 700 Capital Avenue, Suite 152, Frankfort, Kentucky 40601, for service upon its own agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, by certified mail.

7. Defendant Sunbridge Healthcare Corporation, a subsidiary of Sun Healthcare Group, Inc., is a foreign for-profit corporation with its principal office located at 101 Sun Avenue, NE, Albuquerque, New Mexico 87109. Defendant Sunbridge Healthcare Corporation is authorized to do business in the Commonwealth of Kentucky, and is engaged in the business of custodial care of **elderly** and infirm nursing home residents in nursing facilities in several states across the country. Upon information and belief, at all times material to this action, Defendant Sunbridge Healthcare Corporation owned, operated, managed, controlled and/or provided services for nursing facilities, including Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center in Madisonville, Hopkins County, Kentucky. The causes of action made the basis of this suit arise out of such business conducted by said Defendant Sunbridge Healthcare Corporation in the ownership, operation, management, control and/or services provided for the facility during the residency of Joseph Clint Offutt. The agent for service of process for Defendant Sunbridge Healthcare Corporation is CSC-Lawyers Incorporating Service Company, 421 West Main Street, Frankfort, Kentucky 40601.

8. Defendant Harborside Healthcare Corporation, a wholly-owned subsidiary of Sunbridge Healthcare Corporation, is a foreign for-profit corporation with its principal office located at One Beacon Street, Suite 1100, Boston, Massachusetts 02108, and is engaged in the business of custodial care of **elderly** and infirm nursing home residents in nursing facilities in several states across the country. Upon information and belief, at all times material to this action, Harborside Healthcare Corporation owned, operated, managed, controlled, and/or provided services for nursing facilities, including Harborside Healthcare - Madisonville Rehabilitation and Nursing Center in Madisonville, Hopkins County, Kentucky. The causes of action made the basis of this suit arise out of such business conducted by said Defendant Harborside Healthcare Corporation in the ownership, operation, management, control and/or services provided for the facility during the residency of Joseph Clint Offutt. Defendant Harborside

Healthcare Corporation is without an agent for service of process within the Commonwealth of Kentucky and which should, therefore, be served by service of process upon the Kentucky Office of the Secretary of State, The Capitol Building, 700 Capital Avenue, Suite 152, Frankfort, Kentucky 40601, for service upon its own agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, by certified mail.

9. Defendant Harborside Healthcare Management, LLC, is a foreign limited liability company with its principal office located at One Beacon Street, Suite 1100, Boston, Massachusetts 02108. Upon information and belief, at all times material to this action, Defendant Harborside Healthcare Management, LLC owned, operated, managed, controlled and/or provided services for nursing facilities, including Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center in Madisonville, Hopkins County, Kentucky. The causes of action made the basis of this suit arise out of such business conducted by said Defendant Harborside Healthcare Management, LLC in the ownership, operation, management, control and/or services provided for the facility during the residency of Joseph Clint Offutt. Defendant Harborside Healthcare Management, LLC is without an agent for service of process within the Commonwealth of Kentucky and which should, therefore, be served by process upon the Kentucky Office of the Secretary of State, The Capitol Building, 700 Capital Avenue, Suite 152, Frankfort, Kentucky 40601, for service upon its own agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, by certified mail.

10. Defendant Massachusetts Holdings II, Limited Partnership is a foreign limited partnership organized under the laws of Massachusetts, with its principal office located at One Beacon Street, Suite 1100, c/o Harborside Healthcare Corporation, Boston, Massachusetts 02108. Upon information and belief, Defendant Massachusetts Holdings II, Limited Partnership, at all times material to this action, owned, operated, managed, controlled and/or provided services for nursing facilities, including Harborside - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center in Madisonville, Hopkins County, Kentucky. The causes of action made the basis of this suit arise out of such business conducted by said. Defendant Massachusetts Holdings II, Limited Partnership in the ownership, operation, management, control and/or services provided for the facility during the residency of Joseph Clint Offutt. Defendant Massachusetts Holdings II, Limited Partnership is without an agent for service of process within the Commonwealth of Kentucky and which should, therefore, be served by service of process upon the Kentucky Office of the Secretary of State, The Capitol Building, 700 Capital Avenue, Suite 152, Frankfort, Kentucky 40601, for service upon its own agent, Corporation Service Company, 84 State Street, Boston, Massachusetts 02109, by certified mail.

11. Defendant Harborside Administrative Services, LLC, is a foreign limited liability company authorized to do business in the Commonwealth of Kentucky, with its principal office located at One Beacon Street, Boston, Massachusetts 02108. Upon information and belief, at all times material to this action, Defendant Harborside Administrative Services, LLC owned, operated, managed, controlled and/or provided services for nursing facilities, including Harborside Healthcare - Madisonville Rehabilitation and Nursing center n/k/a Hillside Villa Care and Rehabilitation Center in Madisonville, Hopkins County, Kentucky. The causes of action made the basis of this suit arise out of such business conducted by said Defendant Harborside Administrative Services, LLC in the ownership, operation, management, control and/or services provided for the facility during the residency of Joseph Clint Offutt. The agent for service of process for Defendant Harborside Administrative Services, LLC is CSC-Lawyers Incorporating Service Company, 421 West Main Street, Frankfort, Kentucky 40601.

12. Defendant Harborside Health 1, LLC is a foreign limited liability company with its principal office located at One Beacon Street, Suite 1100, Boston, Massachusetts 02108. Upon information and belief, at all times material to this action, Defendant Harborside Health 1, LLC owned, operated, managed, controlled and/or provided services for nursing facilities, including Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center in Madisonville, Hopkins County, Kentucky. The causes of action made the basis of this suit arise out of such business conducted by said Defendant Harborside Health 1, LLC in the ownership, operation, management, control and/or services provided for the facility during the residency of Joseph Clint Offutt. Defendant Harborside Health 1, LLC is without an agent for service of process within the Commonwealth of Kentucky and which should, therefore, be served by process upon the Kentucky Office

of the Secretary of State, The Capitol Building, 700 Capital Avenue, Suite 152, Frankfort, Kentucky 40601, for service upon its own agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, by certified mail.

13. Defendant Harborside Holdings 1, LLC is a foreign limited liability company authorized to do business in the Commonwealth of Kentucky, with its principal office located at One Beacon Street, Suite 1100, Boston, Massachusetts 02108. Upon information and belief, at all times material to this action, Defendant Harborside Holdings 1, LLC owned, operated, managed, controlled and/or provided services for nursing facilities, including Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center in Madisonville, Hopkins County, Kentucky. The causes of action made the basis of this suit arise out of such business conducted by said Defendant Harborside Holdings 1, LLC in the ownership, operation, management, control and/or services provided for the facility during the residency of Joseph Clint Offutt. The agent for service of process for Defendant Harborside Holdings 1, LLC is CSC-Lawyers Incorporating Service Company, 421 West Main Street, Frankfort, Kentucky 40601.

14. Defendant Kentucky Holdings 1, LLC is a foreign limited liability company authorized to do business in the Commonwealth of Kentucky, with its principal office located at One Beacon Street, Suite 1100, Boston, Massachusetts 02108. Upon information and belief, at all times material to this action, Defendant Kentucky Holdings 1, LLC owned, operated, managed, controlled and/or provided services for nursing facilities, including Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center in Madisonville, Hopkins County, Kentucky. The causes of action made the basis of this suit arise out of such business conducted by said Defendant Kentucky Holdings 1, LLC in the ownership, operation, management, control and/or services provided for the facility during the residency of Joseph Clint Offutt. The agent for service of process for Defendant Kentucky Holdings 1, LLC is CSC-Lawyers Incorporating Service Company, 421 West Main Street, Frankfort, Kentucky 40601.

15. Defendant HBR Kentucky, LLC is a foreign limited liability company authorized to do business in the Commonwealth of Kentucky, with its principal office located at One Beacon Street, Suite 1100, Boston, Massachusetts 02108. Upon information and belief, at all times material to this action, Defendant HBR Kentucky, LLC owned, operated, managed, controlled and/or provided services for nursing facilities, including Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center in Madisonville, Hopkins County, Kentucky. The causes of action made the basis of this suit arise out of such business conducted by said Defendant HBR Kentucky, LLC in the ownership, operation, management, control and/or services provided for the facility during the residency of Joseph Clint Offutt. The agent for service of process for Defendant HBR Kentucky, LLC is CSC-Lawyers Incorporating Service Company, 421 West Main Street, Frankfort, Kentucky 40601.

16. Defendant CareerStaff Unlimited, Inc. is a foreign for-profit corporation authorized to do business in the Commonwealth of Kentucky, with its principal office located at 101 Sun Avenue, NE, Albuquerque, New Mexico 87109. Upon information and belief, at all times material to this action, Defendant CareerStaff Unlimited, Inc. provided medical staffing services to nursing facilities, including Harborside Healthcare-Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center. The causes of action made the basis of this suit arise out of such business conducted by said Defendant CareerStaff Unlimited, Inc. in the medical staffing services provided to the facility during the residency of Joseph Clint Offutt. The agent for service of process for Defendant CareerStaff Unlimited, Inc. is CSC-Lawyers Incorporating Service Company, 421 West Main Street, Frankfort, Kentucky 40601.

17. Upon information and belief, Defendant Karen Langston was an Administrator at Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center during the residency of Joseph Clint Offutt. The causes of action made the basis of this suit arise out of Defendant Karen Langston's administration of the facility during the residency of Joseph Clint Offutt. Defendant Karen Langston may be served at her last known address at 863 McGregor Road, Nortonville, Kentucky 42442-9770.

18. Defendants John Does 1 through 5 are entities and/or persons, either providing care and services to Joseph Clint Offutt, or directly or vicariously liable for the injuries of Joseph Clint Offutt. Plaintiff is currently unable to identify these Unknown Defendants, despite diligent efforts, but may discover such identities upon further investigation. Said Defendants are named insofar as their acts/or omissions were negligent, tortious or otherwise wrongful with respect to the care, treatment and services to Joseph Clint Offutt during his residency at Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center.

19. Whenever the term “Nursing Home Defendants” is utilized within this suit, such term collectively refers to and includes HBR Madisonville, LLC d/b/a Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center; Sun Healthcare Group, Inc.; Sunbridge Healthcare Corporation; Harborside Healthcare Corporation; Harborside Healthcare Management, LLC; Massachusetts Holdings II, Limited Partnership; Harborside Administrative Services, LLC; Harborside Health 1, LLC; Harborside Holding 1, LLC; Kentucky Holdings 1, LLC; HBR Kentucky, LLC; and CareerStaff Unlimited, Inc.

20. Whenever the term “Administrator Defendant” is utilized within this suit, such term refers to Karen Langston.

21. Whenever the term “Defendants” is utilized within this suit, such term collectively refers to and includes all named Defendants in this lawsuit.

22. Defendants controlled the operation, planning, management, budget and quality control of Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center. The authority exercised by Defendants over the nursing facility included, but was not limited to, control of marketing, human resources management, training, staffing, creation, and implementation of all policy and procedure manuals used by nursing facilities in Kentucky, federal and state reimbursement, quality care assessment and compliance, licensure and certification, legal services, and financial, tax and accounting control through fiscal policies established by Defendants.

23. Jurisdiction and venue are proper in this Court.

FACTUAL ALLEGATIONS

24. Upon information and belief, Joseph Clint Offutt was looking to Defendants for treatment of his total needs for custodial, nursing and medical care and not merely as the situs where others not associated with the facility would treat him.

25. At all relevant times mentioned herein, Nursing Home Defendants owned, operated and/or controlled, and/or provided services for Harborside Healthcare - Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center, either directly or through a joint enterprise, partnership or the agency of each other and/or other diverse subalterns, subsidiaries, governing bodies, agents, servants or employees.

26. Defendants are directly or vicariously liable for any acts and omissions by any person or entity, controlled directly or indirectly, including any governing body, officer, partner, employee, ostensible or apparent agent, consultant or independent contractor, whether in-house or outside individuals, entities, agencies or pools. Defendants authorized or ratified or should have anticipated the acts and omissions in question.

27. Due to the wrongful conduct of Defendants, Joseph Clint Offutt suffered accelerated deterioration of his health and physical condition beyond that caused by the normal aging process, as well as the following injuries:

a) Severe dehydration;

b) Hypernatremia;

- c) Malnutrition;
- d) Multiple pressure sores;
- e) Infections, including suspected urinary tract infection and sepsis;
- f) Poor hygiene;
- g) Unnecessary pain; and
- h) Death.

Joseph Clint Offutt also suffered unnecessary loss of personal dignity, pain and suffering, degradation, emotional distress and hospitalization, all of which were caused by the wrongful conduct of the Defendants as alleged herein. Allegations of neglect of Joseph Clint Offutt have been substantiated by the Adult Protective Service Department of the Commonwealth of Kentucky. These findings are documented in a report which is attached hereto as **Exhibit A**.

CAUSES OF ACTION AGAINST NURSING HOME DEFENDANTS NEGLIGENCE

28. Plaintiff incorporates all of the allegations contained in Paragraphs 1 - 27 as if fully set forth herein.

29. Nursing Home Defendants owed a non-delegable duty to Joseph Clint Offutt, to provide the custodial care, services and supervision that a reasonably careful nursing home would provide under similar circumstances.

30. Upon information and belief, Nursing Home Defendants knowingly developed and maintained staffing levels at the facility in disregard of patient acuity levels as well as the minimal time required for Nursing Home Defendants to perform the essential functions of providing care to Joseph Clint Offutt.

31. Nursing Home Defendants negligently failed to deliver care, services and supervision, including, but not limited to, the following acts and omissions:

a) The failure by the members of the governing body of the facility to discharge their legal and lawful obligation by:

1) ensuring that the rules and regulations designed to protect the health and safety of the residents, such as Joseph Clint Offutt, as promulgated by the Cabinet for Health and Family Services, Division of Long Term Care;

2) ensuring compliance with the resident care policies for the facility; and,

3) ensuring that appropriate corrective measures were implemented to correct problems concerning inadequate resident care;

b) The failure to develop, implement and follow policies to assist Joseph Clint Offutt in attaining and maintaining the highest level of physical, mental and psychological well-being and to promote his healing or cure;

c) The failure to maintain all records on Joseph Clint Offutt in accordance with accepted professional standards and practices;

d) The failure to provide the minimum number of qualified personnel to meet the total needs of Joseph Clint Offutt;

e) Failure to provide Joseph Clint Offutt with adequate amounts of fluid to prevent dehydration;

- f) The failure to provide adequate supervision to the nursing staff to ensure that Joseph Clint Offutt received adequate and proper sanitary care, medications, repositioning, turning, and skin care;
- g) The failure to ensure that Joseph Clint Offutt received adequate assessment of his nutritional needs;
- h) Failure to ensure that Joseph Clint Offutt received adequate and proper nutrition, fluids, supervision, medication and skin care;
- i) Failure to provide Joseph Clint Offutt with adequate sanitary care;
- j) The failure to monitor or increase the number of nursing personnel at the facility to ensure that Joseph Clint Offutt:
 - 1) received timely and accurate care assessments;
 - 2) received prescribed treatment, medication and diet; and,
 - 3) received timely custodial, nursing and medical intervention due to a significant change in condition;
- k) The failure to provide adequate nursing and other staff that was properly staffed, qualified and trained;
- l) Failure to increase the number of personnel at the facility to ensure that Joseph Clint Offutt received timely and appropriate custodial care, including, but not limited to, bathing, grooming, incontinent care, personal attention and care to his skin, feet, and nails, oral hygiene, and hair cuts;
- m) The failure to have in place adequate guidelines, and policies and procedures of the facility and to administer those policies through enforcement of any rules, regulations, by-laws or guidelines;
- n) The failure to take reasonable steps to prevent, eliminate and correct deficiencies and problems in resident care at the facility; and,
- o) The failure to provide a safe environment for care, treatment and recovery, and to exercise ordinary care and attention for the safety of Joseph Clint Offutt in proportion to his particular physical and mental ailments, known or discoverable by the exercise of reasonable skill and diligence.

32. A reasonably careful nursing facility would not have failed to provide the care listed above. It was foreseeable that these breaches of ordinary care would result in serious injuries and death to Joseph Clint Offutt. With regard to each of the foregoing acts of negligence, Nursing Home Defendants acted with oppression, fraud, malice, or were grossly negligent by acting with wanton or reckless disregard for the health and safety of Joseph Clint Offutt.

33. Pursuant to [KRS 446.070](#), Plaintiff also alleges Nursing Home Defendants violated statutory and regulatory duties of care, the violations of which are actionable as negligence *per se*. Joseph Clint Offutt was injured by the statutory violations of Nursing Home Defendants and was within the class of persons for whose benefit the statutes were enacted and who was intended to be protected by these statutes. The negligence *per se* of Nursing Home Defendants included, but is not limited to, violation(s) of the following:

- a) Violation(s) of [KRS 209.005 et seq.](#) and the regulations promulgated thereunder, by **abuse**, neglect and/or exploitation of Joseph Clint Offutt;

b) Violation(s) of [KRS 530.080 et seq.](#), endangering the welfare of an incompetent person, by knowingly acting in a manner which resulted in an injury to the physical and/or mental welfare of Joseph Clint Offutt, who was unable to care for himself because of his illness; and

c) Violation(s) of the statutory standards and requirements governing licensing and operation of long-term care facilities as set forth by the Cabinet for Health and Family Services, pursuant to provisions of KRS Chapter 216 and the regulations promulgated thereunder, as well as the applicable federal laws and regulations governing the certification of long-term care facilities under Titles XVIII or XIX of the Social Security Act.

34. With regard to each of the foregoing acts of negligence, Nursing Home Defendants acted with oppression, fraud, malice, or were grossly negligent by acting with wanton or reckless disregard for the health and safety of Joseph Clint Offutt.

35. As a direct and proximate result of such oppression, fraud, malice, or gross negligence, Joseph Clint Offutt suffered the injuries described herein. Plaintiff asserts a claim for judgment for all compensatory and punitive damages against the Nursing Home Defendants including, but not limited to, medical expenses, pain and suffering, mental anguish, disability, disfigurement and loss of life, in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, plus costs and all other relief to which Plaintiff is entitled by law.

MEDICAL NEGLIGENCE

36. Plaintiff incorporates all of the allegations contained in Paragraphs 1 - 35 as if fully set forth herein.

37. Nursing Home Defendants had a duty to provide the standard of professional medical care and services of a reasonably competent nursing facility acting under the same and similar circumstances.

38. Nursing Home Defendants failed to meet applicable standards of medical care. The medical negligence or malpractice of Nursing Home Defendants included, but was not limited to, the following acts and omissions:

a) The overall failure to ensure that Joseph Clint Offutt received the following:

1) timely and accurate care assessments;

2) prescribed treatment, medication and diet;

3) necessary supervision; and

4) timely nursing and medical intervention due to a significant change in condition;

b) The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants and medication aides to meet the total needs of Joseph Clint Offutt throughout his residency;

c) Failure to provide and implement an adequate nursing care plan based on the needs of Joseph Clint Offutt;

d) Failure to provide proper treatment and assessment to Joseph Clint Offutt in order to prevent infections, including but not limited to, urinary tract infections and sepsis;

e) The failure to ensure that Joseph Clint Offutt received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments, medications, and skin care to prevent skin breakdown;

- f) The failure to provide accurate and complete weekly skin audits on Joseph Clint Offutt to effectively detect and prevent skin breakdown;
- g) Failure to provide care, treatment and medication in accordance with physician's orders;
- h) Failure to adequately and appropriately monitor Joseph Clint Offutt and recognize significant changes in his health status, and to timely notify his physician of significant changes in his health status;
- i) Nursing Home Defendants were responsible for the infliction of physical pain, injury, and mental anguish upon Joseph Clint Offutt; and
- j) Failure to ensure Joseph Clint Offutt was not deprived of the services necessary to maintain his health and welfare.

39. It was foreseeable that the breaches of care listed above would result in serious injuries and the death of Joseph Clint Offutt. A reasonably competent nursing facility acting under the same or similar circumstances would not have failed to provide the care listed above.

40. With regard to each of the foregoing acts of professional or medical negligence, Nursing Home Defendants acted with oppression, fraud, malice, or were grossly negligent by acting with wanton or reckless disregard for the health and safety of Joseph Clint Offutt.

41. As a direct and proximate result of such oppression, fraud, malice, or gross negligence, Joseph Clint Offutt suffered the injuries described herein. Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Nursing Home Defendants including, but not limited to, medical expenses, pain and suffering, mental anguish, disability and disfigurement and loss of life, in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, plus costs and all other relief to which Plaintiff is entitled by law.

CORPORATE NEGLIGENCE

42. Plaintiff incorporates all of the allegations contained in Paragraphs 1-41 as if fully set forth herein.

43. Upon information and belief, Joseph Clint Offutt was looking to Nursing Home Defendants' facility for treatment of his physical ailments and not merely as the situs where others not associated with the facility would treat him for his problems. There is a presumption that the treatment Joseph Clint Offutt received was being rendered through employees of Nursing Home Defendants and that any negligence associated with that treatment would render Nursing Home Defendants responsible. Nursing Home Defendants or persons or entities under their control, or to the extent Nursing Home Defendants were vicariously liable through the ostensible or apparent agency of others, owed a non-delegable duty to residents, including Joseph Clint Offutt, to use the degree and skill of care which is expected of reasonably competent medical practitioners acting in the same or similar circumstances.

44. Nursing Home Defendants owed a non-delegable duty to assist Joseph Clint Offutt in attaining and maintaining the highest level of physical, mental and psychological well-being and to promote his cure.

45. Nursing Home Defendants owed a duty to Joseph Clint Offutt to maintain their facility, including providing and maintaining medical equipment; and hiring, supervising and retaining nurses and other staff employees.

46. Nursing Home Defendants owed a duty to Joseph Clint Offutt to have in place procedures and protocols that properly care for residents and to administer these policies through enforcement of any rules, regulations, by-laws or guidelines, which were adopted by Nursing Home Defendants to ensure smoothly run facilities and adequate resident care.

47. Nursing Home Defendants owed a duty to Joseph Clint Offutt to provide a safe environment, treatment and recovery, and to exercise ordinary care and attention for the safety of residents in proportion to the physical and mental ailments of each particular resident, known or discoverable by the exercise of reasonable skill and diligence. The duty of reasonable care and attention extended to safeguarding Joseph Clint Offutt from danger due to his mental incapacity to care for himself. Nursing Home Defendants had a duty to protect Joseph Clint Offutt from any danger which the surroundings would indicate might befall him in view of any peculiar trait exhibited by him or which his mental condition or aberration would suggest as likely to happen.

48. With regard to each of the foregoing acts of professional or medical negligence, Nursing Home Defendants acted with oppression, fraud, malice, or were grossly negligent by acting with wanton or reckless disregard for the health and safety of Joseph Clint Offutt.

49. As a direct and proximate result of such oppression, fraud, malice, or gross negligence, Joseph Clint Offutt suffered the injuries described herein. Plaintiff asserts a claim for judgment for all compensatory and punitive damages against the Nursing Home Defendants including, but not limited to, medical expenses, pain and suffering, mental anguish, disability, disfigurement and loss of life, in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, plus costs and all other relief to which Plaintiff is entitled by law.

VIOLATIONS OF LONG TERM CARE RESIDENT'S RIGHTS

50. Plaintiff incorporates all of the allegations contained in Paragraphs 1 - 49 as if fully set forth herein.

51. Nursing Home Defendants violated statutory duties owed to Joseph Clint Offutt as a resident of a long term care facility, [Kentucky Revised Statutes 216.510 et seq.](#) These statutory duties were non-delegable.

52. The violations of the resident's rights of Joseph Clint Offutt include, but are not limited to, the following:

- a) Violation of the right to be treated with consideration, respect, and full recognition of his dignity and individuality;
- b) Violation of the right to have a responsible party or family member or his guardian notified immediately of any accident, sudden illness, disease, unexplained absence, or anything unusual involving the resident;
- c) Violation of the right to have an adequate and appropriate resident care plan developed, implemented and updated to meet his needs;
- d) Violation of the right to be free from **abuse** and neglect; and
- e) Violation of the statutory standards and requirements governing licensing and operation of long-term care facilities as set forth by the Cabinet for Health and Family Services, pursuant to provisions of K.R.S. Chapter 216 and the regulations promulgated thereunder, as well as the applicable federal laws and regulations governing the certification of long-term care facilities under Titles XVIII or XIX of the Social Security Act.

53. As a result of the aforementioned violations of the Resident's Rights Statutes by Nursing Home Defendants, pursuant to [K.R.S. § 216.515\(26\)](#), Plaintiff is entitled to recover actual damages in an amount to be determined by the jury, but in excess

of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, as well as costs and attorney's fees.

54. With regard to the aforementioned violations of the Resident's Rights Act, Nursing Home Defendants acted with oppression, fraud, malice, or were grossly negligent, by acting with wanton and reckless disregard for the rights of Joseph Clint Offutt and, pursuant to [K.R.S. § 216.515\(26\)](#), Plaintiff is entitled to punitive damages from Nursing Home Defendants in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, as well as costs and attorney's fees.

**CAUSES OF ACTION AGAINST KAREN LANGSTON, AS ADMINISTRATOR
OF HARBORSIDE HEALTHCARE - MADISONVILLE REHABILITATION AND
NURSING CENTER n/k/a HILLSIDE VILLA CARE AND REHABILITATION CENTER**

FACTUAL ALLEGATIONS

55. Plaintiff incorporates all of the allegations contained in paragraphs 1-27 as if fully set forth herein.

56. Upon information and belief, Karen Langston was an Administrator of Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center during the residency of Joseph Clint Offutt.

57. As Administrator of Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center, Karen Langston was required to be licensed by the Commonwealth of Kentucky. Karen Langston owed ordinary duties of care to Joseph Clint Offutt, as well as professional duties and statutory duties owed to residents by licensed, nursing home administrators in Kentucky, pursuant to the Nursing Home Administrators Licensure Act of 1970, codified as [Kentucky Revised Statutes sections 216A.010 et seq.](#)

58. As a holder of nursing home administrator's license for Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center, Karen Langston was legally and individually responsible for the operation of the facility and the welfare of its residents pursuant to Chapter 216A of the Kentucky Revised Statutes and Title 201, Chapter 6 of the Kentucky Administrative Regulations.

59. Administrator Defendant was also responsible for the total management of Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center pursuant to federal law.

60. Administrator Defendant's management responsibilities included ensuring that Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center operated and provided services in compliance with all applicable federal, state, and local laws, regulations, and codes, and within accepted professional standards and principles.

61. Administrator Defendant was responsible for ensuring that the facility complied with state and federal regulations related to nursing facilities. Administrator Defendant had a duty to administrate the facility in a manner that enabled it to use resources effectively and efficiently to attain or maintain the highest practicable, physical, mental and psychological well-being of each resident. The nursing facility, under the leadership of its administrator, is also required to operate and provide services in compliance with all applicable federal, state and local laws, regulations and codes and with accepted professional standards and principles that apply to professionals providing services in such a facility. Administrator Defendant breached her duties of care to Joseph Clint Offutt by failing to meet these requirements.

NEGLIGENCE

62. Plaintiff incorporates all of the allegations contained in paragraphs 1 - 27 and 56 - 61 as if fully set forth herein.

63. As Administrator of Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center, Administrator Defendant owed a duty to the residents of Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center, including Joseph Clint Offutt, to provide services as a reasonable administrator within accepted standards for nursing home administrators.

64. Administrator Defendant breached her duties owed to the residents of Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center, including Joseph Clint Offutt, during her tenure as Administrator by failing to supervise nurses and nurses' aides and failing to hire sufficient nurses and nurses' aides and, as such, the nurses and nurses' aides were unable to provide Joseph Clint Offutt the care he required. The negligence of Administrator Defendant includes, but is not limited to, the following acts and omissions:

a) The failure to provide sufficient numbers of qualified personnel at the facility to meet the total needs of Joseph Clint Offutt throughout his residency and to ensure that Joseph Clint Offutt:

1) received timely and accurate care assessments;

2) received treatment, medication, and diet; and

3) was protected from accidental injuries by the correct use of ordered and reasonable safety measures;

b) The failure to adequately screen, evaluate, and test for competence in selecting personnel to work at the facility;

c) The failure to ensure that the staff provided Joseph Clint Offutt with sufficient amounts of fluids to prevent dehydration throughout his residency at the facility;

d) The failure to ensure that Joseph Clint Offutt attained and maintained his highest level of physical, mental, and psychosocial well-being;

e) The failure to ensure that Joseph Clint Offutt was treated with the dignity and respect that all nursing home residents are entitled to receive;

f) The failure to provide a safe environment for Joseph Clint Offutt;

g) The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care at the facility;

h) The failure to discipline or terminate employees at the facility assigned to Joseph Clint Offutt that were known to be careless, incompetent, and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated by the Cabinet for Health and Family Services;

i) The failure to adopt adequate guidelines, policies, and procedures for:

1) Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at the facility by the Cabinet for Health and Family Services or any other authority;

2) Determining the cause of any such deficiencies, violations, or penalties;

3) Establishing the method and means for correcting deficiencies or licensure violations or penalties found to exist at the facility;

- 4) Determining whether the facility had sufficient numbers of personnel to meet the total needs of Joseph Clint Offutt; and,
- 5) Documenting, maintaining files, investigating, and responding to any complaint regarding the quality of resident care, or misconduct by employees at the facility, regardless of whether such complaint derived from a resident of said facility, an employee of the facility, or any interested person;
- j) The failure to maintain all records on Joseph Clint Offutt in accordance with accepted professional standards and practice that were complete, accurately documented, readily accessible, and systematically organized with respect to his diagnosis, treatment, and appropriate care plans of care and treatment.
- k) The failure to adequately hire, train, supervise and retain a sufficient amount of competent and qualified registered nurses, licensed vocational nurses, nurse assistants and other personnel in said facility to assure that Joseph Clint Offutt received care, treatment, and services in accordance with State and Federal law;
- l) The failure to assign nursing personnel at the facility duties consistent with their education and experience based on:
 - 1) Joseph Clint Offutt's medical history and condition, nursing, and rehabilitative needs;
 - 2) The characteristics of the resident population residing in the area of the facility where Joseph Clint Offutt was a resident; and,
 - 3) Nursing skills needed to provide care to such resident population;
- m) The failure to provide nursing personnel sufficient in number to provide proper treatment and assessment to Joseph Clint Offutt and other residents, to protect Joseph Clint Offutt's skin integrity; and
- n) The failure to provide adequate supervision to the nursing staff so as to ensure that Joseph Clint Offutt received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments, and skin care to prevent infection, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Joseph Clint Offutt.

65. A reasonably careful nursing home administrator would have foreseen that the failure to provide the ordinary care listed above would result in devastating injuries and the death of Joseph Clint Offutt: Each of the foregoing acts of negligence on the part of Administrator Defendant was accompanied by such wanton or reckless disregard for the health and safety of Joseph Clint Offutt as to constitute gross negligence.

66. Additionally, Administrator Defendant's failure to operate, manage or administer Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center in compliance with federal, state, and local laws, regulations, and codes intended to protect nursing home residents, included, but was not limited to:

- a) The failure to ensure compliance with rules and regulations of the Cabinet for Health and Family Services, pursuant to Chapters 216, 216B and 13A of the Kentucky Revised Statutes and the administrative regulations promulgated thereunder, and the federal minimum standards imposed by the United States Department of Health and Human Services, [42 C.F.R. sections 405.301 et seq.](#);
- b) The failure to ensure compliance with laws and regulations promulgated by the Cabinet for Health and Family Services to provide the minimum number of staff necessary to assist Joseph Clint Offutt with his needs;
- c) The failure to ensure compliance with law and regulations of the Board of Licensure for Nursing Home Administrators pursuant to the Nursing Home Administrators Licensure Act of 1970, [Kentucky Revised Statutes sections 216A.010 et seq.](#);

- d) The failure to provide the necessary care and services to attain or maintain the highest practicable, physical, mental, and psychosocial well-being of Joseph Clint Offutt, and in accordance with the comprehensive assessment and plan of care created at the facility;
- e) The failure to provide sufficient nursing staff and nursing personnel to provide adequate and appropriate nursing care to Joseph Clint Offutt in accordance with the resident care plan generated at the facility;
- f) The failure to administer the facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of Joseph Clint Offutt;
- g) The failure to ensure a nursing care plan based on Joseph Clint Offutt's problems and needs was established which contained measurable objectives and time tables to meet his medical, nursing, mental, and psychosocial needs as identified in his comprehensive assessment, which was reviewed and revised when the needs of Joseph Clint Offutt changed;
- h) The failure to notify Joseph Clint Offutt's family and physician of a need to alter his treatment significantly;
- i) The failure to provide a safe environment; and,
- j) The failure to ensure that Joseph Clint Offutt maintained acceptable parameters of nutritional status and received a therapeutic diet throughout his residency.

67. Joseph Clint Offutt was member of a class intended to be protected by the above laws and regulations. The injuries alleged in Paragraph 27 resulted from events the laws and regulations were designed to prevent.

68. It was foreseeable that these breaches of statutory duties would result in serious injuries and the death of Joseph Clint Offutt. Each of the foregoing acts of negligence per se on the part of the Administrator Defendant was accompanied by such wanton or reckless disregard for the health and safety of Joseph Clint Offutt as to constitute gross negligence.

69. As a direct and proximate result of such grossly negligent, wanton, or reckless conduct, Joseph Clint Offutt suffered the injuries described in Paragraph 27, and Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Administrator Defendant including, but not limited to, medical expenses, pain and suffering, mental anguish, disability, disfigurement, and loss of life, in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, plus costs and all other relief to which Plaintiff is entitled by law.

CAUSES OF ACTION AGAINST ALL DEFENDANTS

WRONGFUL DEATH

70. Plaintiff incorporates all of the allegations contained in Paragraphs 1-69 as if fully set forth herein.

71. As a direct and proximate result of the previously alleged conduct, all of which was grossly negligent, wanton or reckless, Defendants caused the death of Joseph Clint Offutt by their wrongful conduct.

72. Joseph Clint Offutt suffered personal injuries, including excruciating pain and suffering, mental anguish, and emotional distress, resulting in his death. The pain, disfigurement and loss of dignity suffered by Joseph Clint Offutt caused his family to suffer more than normal grief upon his death.

73. As a direct and proximate result of, the wrongful death suffered by Joseph Clint Offutt, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against all Defendants including, but not limited to, medical expenses, funeral expenses and other related costs, pain and suffering, the grief suffered by statutory beneficiaries, mental anguish, disability and loss of life in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, as well as costs and attorney's fees, plus costs and all other relief to which Plaintiff is entitled by law.

LOSS OF SPOUSAL CONSORTIUM

74. Plaintiff incorporates all of the allegations contained in Paragraphs 1-73 as if fully set forth herein.

75. As a direct and proximate result of the previously alleged conduct, all of which was negligent, grossly negligent, wanton or reckless, Defendants caused injury and disability to Joseph Clint Offutt, resulting in Plaintiff, Pearline W. Offutt, losing her right to the services, assistance, aid, society, companionship and conjugal relationship between herself and Joseph Clint Offutt.

76. As a direct and proximate result of the previously alleged conduct, all of which was negligent, grossly negligent, wanton or reckless, Defendants caused the death of Joseph Clint Offutt by their wrongful conduct.

77. As a direct and proximate result of the wrongful death suffered by Joseph Clint Offutt, Plaintiff, Pearline W. Offutt, lost her right to the services, assistance, aid, society, companionship and conjugal relationship between herself and Joseph Clint Offutt.

78. As a direct and proximate result of the injury, disability and wrongful death of Joseph Clint Offutt, Plaintiff asserts a claim for judgment for any and all damages to which she may be entitled for the loss of spousal consortium caused by the Defendants, as outlined above, in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, as well as costs and attorney's fees, plus costs and all other relief to which Plaintiff is entitled by law.

DAMAGES

79. Plaintiff incorporates all of the allegations contained in Paragraphs 1-78 as if fully set forth herein.

80. As a direct and proximate result of the negligence of all Defendants as set out above, Joseph Clint Offutt suffered injuries including, but not limited to, those listed herein. As a result, Joseph Clint Offutt suffered embarrassment and physical impairment, and incurred significant medical and funeral expenses.

81. Plaintiff seeks punitive and compensatory damages against all Defendants in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Pearline W. Offutt, Individually, and as Administratrix of the Estate of Joseph Clint Offutt, deceased, and on behalf of the wrongful death beneficiaries of Joseph Clint Offutt, prays for judgment against Defendants, HBR Madisonville, LLC d/b/a Harborside Healthcare - Madisonville Rehabilitation and Nursing Center n/k/a Hillside Villa Care and Rehabilitation Center; Sun Healthcare Group, Inc.; Sunbridge Healthcare Corporation; Harborside Healthcare Corporation; Harborside Healthcare Management, LLC; Massachusetts Holdings II, Limited Partnership; Harborside Administrative Services, LLC; Harborside Health 1, LLC; Harborside Holding 1, LLC; Kentucky Holdings 1, LLC; HBR Kentucky, LLC; CareerStaff Unlimited, Inc.; Karen Langston, in her capacity as Administrator of Harborside Healthcare - Madisonville

Rehabilitation and Nursing Center; and John Does 1 through 5, Unknown Defendants, in an amount to be determined from the evidence, the costs herein expended, and all other relief to which Plaintiff is entitled, including TRIAL BY JURY.

Respectfully submitted this 7th day of October, 2010,

Pearline W. Offutt, Individually, and as Administratrix of the Estate of Joseph Clint Offutt, deceased, and on behalf of the wrongful death beneficiaries of Joseph Clint Offutt

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.